

103^D CONGRESS
1ST SESSION

S. 1563

To provide assistance to employees who are subject to a plant closing or mass layoff because their work is transferred to a foreign country that has low wages or unhealthy working conditions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 18 (legislative day, OCTOBER 13), 1993

Mr. RIEGLE introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To provide assistance to employees who are subject to a plant closing or mass layoff because their work is transferred to a foreign country that has low wages or unhealthy working conditions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Jobs Protec-
5 tion Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) During the last 2 decades, millions of jobs
2 in the United States have been transferred by busi-
3 nesses to foreign countries to take advantage of the
4 low wages and lack of labor standards in those coun-
5 tries.

6 (2) Millions of additional jobs in the United
7 States are at risk of such a transfer during the
8 1990s, particularly if the North American Free
9 Trade Agreement is approved by the Congress.

10 (3) The threat of the transfer of work to low-
11 wage foreign countries suppresses wages and bene-
12 fits to workers in the United States and thereby
13 lessens the purchasing power of middle class families
14 in the United States.

15 (4) The transfer of jobs to low-wage foreign
16 countries imposes a severe burden upon the individ-
17 ual workers who are dislocated by such transfers
18 and the communities that are affected by such
19 transfers.

20 (5) The provision of income, continued health
21 and pension benefits, and job training assistance to
22 such dislocated workers would significantly ease the
23 burdens caused by the transfer of jobs to low-wage
24 foreign countries.

1 (6) The transfer of jobs to take advantage of
2 the low wages and lack of labor standards in foreign
3 countries is detrimental to the interests of the
4 United States because such transfers are based on
5 the incorrect premise that the employees of busi-
6 nesses constitute a cost to be lowered and not an
7 asset that should be developed and utilized.

8 (7) The best chance for the United States to
9 meet international competition in the future is to
10 focus on a competitive strategy that emphasizes
11 high-wage, high-skill employment as opposed to em-
12 ployment that competes internationally on the basis
13 of low wages.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to discourage the transfer of work to low-
16 wage foreign countries; and

17 (2) to require businesses that transfer work to
18 low-wage foreign countries to mitigate the costs of
19 the dislocation to workers and communities subject
20 to that dislocation.

21 **SEC. 3. DEFINITIONS.**

22 For purposes of this Act, the following definitions
23 apply:

24 (1) AFFECTED EMPLOYEES.—The term “af-
25 fected employees” means employees who may rea-

1 sonably be expected to experience an employment
2 loss as a consequence of a proposed plant closing or
3 mass layoff.

4 (2) EMPLOYER.—The term “employer” means
5 any business enterprise that employs—

6 (A) 25 or more employees, excluding part-
7 time employment; or

8 (B) 25 or more employees who in the ag-
9 gregate work at least 1,000 hours per week.

10 Such term includes all business entities that have
11 substantial ownership interest, substantial manage-
12 ment authority or substantial control over the terms
13 and conditions of employment of employees at a site
14 of employment subject to an employment loss.

15 (3) EMPLOYMENT LOSS.—The term “employ-
16 ment loss” means—

17 (A) an employment termination, other than
18 a discharge for cause, voluntary departure, or
19 retirement;

20 (B) a layoff exceeding 6 months;

21 (C) a reduction in hours of work of more
22 than 50 percent during each month of any 6-
23 month period; or

1 (D) a reduction in salary of more than 33
2 percent during each month of any 6-month
3 period.

4 (4) GROUP HEALTH PLAN.—The term “group
5 health plan” means an employee welfare benefit plan
6 providing medical care (as defined in section 213(d)
7 of the Internal Revenue Code of 1986) to partici-
8 pants or beneficiaries or dependents, directly or
9 through insurance, reimbursement, or otherwise.

10 (5) LOCATION ASSISTANCE.—The term “loca-
11 tion assistance” includes any subsidy, infrastructure
12 development or improvement, tax relief, site prepara-
13 tion assistance, hiring and training assistance, or
14 other economic benefit offered by a State or unit of
15 local government to induce an employer to locate at,
16 remain at, or expand its operations at a site of em-
17 ployment within the jurisdiction of such State or po-
18 litical subdivision.

19 (6) MASS LAYOFF.—The term “mass layoff”
20 means a reduction in force that—

21 (A) is not the result of a plant closing; and

22 (B) results in an employment loss at a sin-
23 gle site of employment, or one or more facilities
24 or operating units within a single site of em-
25 ployment, during any 30-day period for at least

1 12 employees (excluding any part-time employ-
2 ees).

3 (7) PART-TIME EMPLOYEE.—The term “part-
4 time employee” means an employee who is employed
5 for an average of fewer than 20 hours per week or
6 who has been employed for fewer than 6 of the 12
7 months preceding the date on which notice is re-
8 quired.

9 (8) PLANT CLOSING.—The term “plant closing”
10 means the permanent or temporary shutdown of a
11 single site of employment, or one or more facilities
12 or operating units within a single site of employ-
13 ment, if the shutdown results in an employment loss
14 at the single site of employment during any 30-day
15 period for 12 or more employees, excluding part-time
16 employees.

17 (9) SECRETARY.—The term “Secretary” means
18 the Secretary of Labor.

19 (10) SITE OF EMPLOYMENT.—The term “site
20 of employment” means any factory, mine, business
21 office, facility, or other operating unit, or the func-
22 tional equivalent thereof.

1 **SEC. 4. LIMITATION ON WORK TRANSFER TO LOW-WAGE**
2 **FOREIGN COUNTRIES.**

3 (a) IN GENERAL.—An employer may not implement
4 a plant closing or mass layoff at a site of employment due
5 to a transfer of work to a low-wage foreign country which
6 occurs 1 year before or after such closing or mass layoff
7 (as described in subsection (b)) unless the employer pro-
8 vides notice at least 180 days before such closing or mass
9 layoff in accordance with section 5 and provides benefits
10 to employees in accordance with section 6.

11 (b) TRANSFER OF WORK DESCRIBED.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), work shall be considered to be transferred
14 to a low-wage foreign country for purposes of sub-
15 section (a) if the employer—

16 (A) increases the amount of work per-
17 formed at one or more sites of employment in
18 one or more low-wage foreign countries and
19 such work is substantially similar to the work
20 performed at the site of employment referred to
21 in subsection (a); or

22 (B) increases the amount of products or
23 services that are imported from one or more
24 low-wage foreign countries and such products
25 or services are substantially similar to the prod-

1 ucts or services produced or provided at the site
2 of employment referred to in subsection (a).

3 (2) EXCEPTION.—If an employer who orders a
4 plant closing or mass layoff at a site of employment
5 referred to in subsection (a) proves that the increase
6 in—

7 (A) work (described in paragraph (1)(A))
8 that is performed in a low-wage foreign coun-
9 try; or

10 (B) products or services (described in
11 paragraph (1)(B)) that are imported to the
12 United States from a low-wage foreign country,
13 is not related to the plant closing or mass layoff at
14 such site of employment, the employer shall not be
15 required to provide notice in accordance with section
16 5 or benefits to the employees in accordance with
17 section 6.

18 (3) CONSTRUCTION.—For purposes of para-
19 graph (1), if an increase described in such para-
20 graph is carried out by any person that owns at
21 least 10 percent of an employer described in sub-
22 section (a) or by any person, 10 percent of which is
23 owned by such employer, such employer shall be con-
24 sidered to have carried out such increase.

1 (c) PUBLICATION IN THE FEDERAL REGISTER.—The
2 Secretary shall publish annually in the Federal Register
3 the name of each low-wage foreign country as defined in
4 subsection (d), as determined under regulations developed
5 by the Secretary.

6 (d) LOW-WAGE FOREIGN COUNTRY DEFINED.—For
7 purposes of this section, the term “low-wage foreign coun-
8 try” means—

9 (1) a country in which the average wage is less
10 than 50 percent of the average wage in the United
11 States, as determined by the Secretary; or

12 (2) a country in which the employment stand-
13 ards relating to the payment of overtime compensa-
14 tion, child labor, or employee safety and health that
15 are in effect and enforced in such country are sub-
16 stantially less effective than the standards under the
17 Fair Labor Standards Act of 1938 (29 U.S.C. 201
18 et seq.) and the Occupational Safety and Health Act
19 of 1970 (29 U.S.C. 651 et seq.), as determined by
20 the Secretary.

21 **SEC. 5. NOTICE REQUIREMENTS.**

22 (a) IN GENERAL.—

23 (1) RECIPIENTS OF NOTICE.—An employer who
24 implements a plant closing or mass layoff subject to

1 section 4 shall provide written notice of such closing
2 or mass layoff—

3 (A) to each representative of the affected
4 employees as of the time of the notice or, if
5 there is no such representative at that time, to
6 each affected employee; and

7 (B) to the State dislocated worker unit
8 (designated or created under title III of the Job
9 Training Partnership Act (29 U.S.C. 1651 et
10 seq.)) and the chief elected official of the unit
11 of local government within which such closing
12 or layoff is to occur.

13 (2) SPECIAL RULE FOR RECIPIENTS.—If there
14 is more than one such unit of local government, the
15 unit of local government that the employer shall no-
16 tify is the unit of local government to which the em-
17 ployer pays the highest taxes for the year preceding
18 the year for which the determination is made.

19 (b) CONTENTS OF NOTICE.—The notice required
20 under subsection (a) shall include a statement of—

21 (1) the nature of the site of employment at
22 which the plant closing or mass layoff is to be un-
23 dertaken;

24 (2) the reasons for undertaking such plant clos-
25 ing or mass layoff;

1 (3) any alternative to undertaking such plant
2 closing or mass layoff;

3 (4) any request made by the employer to a
4 State or unit of general local government for loca-
5 tion assistance to avoid such plant closing or mass
6 layoff with respect to such site of employment;

7 (5) the estimated extent of the employment loss
8 within the employer that will result from such plant
9 closing or mass layoff;

10 (6) any plan to minimize the effects of such
11 plant closing or mass layoff on employees at such
12 site of employment and on any unit of local govern-
13 ment having jurisdiction over the geographical area
14 in which the site of employment is located;

15 (7) the economic circumstances of such site of
16 employment, including the level of profitability of op-
17 erations at the site of employment, and any plans
18 for future investment, employment, and production
19 at the site of employment;

20 (8) the economic circumstances of the employer
21 and the feasibility of transferring employees affected
22 by such plant closing or mass layoff to other sites
23 of employment of the employer; and

1 (9) the names and addresses of all employees
2 who will suffer an employment loss as a result of
3 such plant closing or mass layoff.

4 **SEC. 6. EMPLOYEE BENEFITS.**

5 (a) IN GENERAL.—An employer shall provide the fol-
6 lowing benefits to each employee who suffers an employ-
7 ment loss due to a plant closing or mass layoff subject
8 to section 4:

9 (1) SEVERANCE PAY.—Severance pay equal to
10 the product of—

11 (A) the amount equal to 4 weeks wages of
12 the employee, calculated at the average wage
13 that the employee received in the final 26 weeks
14 of employment with the employer; and

15 (B) the number of years the employee was
16 employed by the employer.

17 (2) HEALTH CARE BENEFITS.—Continuation of
18 benefits under the same terms and conditions of a
19 group health plan previously provided to the em-
20 ployee for the period ending 18 months after the
21 date of the plant closing or mass layoff.

22 (3) REIMBURSEMENT FOR RETRAINING AND
23 RELATED EXPENSES.—Reimbursement (not to ex-
24 ceed \$10,000) for retraining, job search, and reloca-
25 tion expenses incurred during the period ending 2

1 years after the date of the notice of the plant closing
2 or mass layoff.

3 (4) TRAINING INCENTIVE PAYMENTS.—Incen-
4 tive payments equal to 25 percent of 1 week's wages
5 of the employee (calculated in accordance with para-
6 graph (1)(A)) for each week during which the em-
7 ployee participates in a job training program during
8 the period ending 2 years after the date of the notice
9 of the plant closing or mass layoff.

10 (5) RETIREMENT BENEFITS.—In any case in
11 which, as of the date of the plant closing or mass
12 layoff, the employee is a participant in an employee
13 pension benefit plan (as defined in section 3(2) of
14 the Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1002(2))) and has attained an age
16 that is at or above 5 years before early or normal
17 retirement age (as defined in section 3(24) of such
18 Act (29 U.S.C. 1002(24)) under the plan, benefits
19 that are the actuarial equivalent of benefit accruals
20 that would occur under the plan if the employee had
21 continued in full-time service under the plan for 5
22 years after such date at the same rate of pay and
23 had made all required contributions for such period.

24 (b) ESTABLISHMENT OF EMPLOYEE ACCOUNT.—

1 (1) IN GENERAL.—An employer who imple-
2 ments a plant closing or mass layoff subject to sec-
3 tion 4 shall establish an employee benefit account
4 into which the employer shall make payments suffi-
5 cient to fund the amount of the benefits to be pro-
6 vided under subsection (a).

7 (2) MANAGEMENT OF ACCOUNT.—The account
8 established under paragraph (1) shall be managed
9 by 5 individuals, of whom—

10 (A) 2 individuals shall be selected by the
11 employer;

12 (B) 2 individuals shall be selected by the
13 affected employees; and

14 (C) 1 individual shall be selected by the 4
15 individuals referred to in subparagraphs (A)
16 and (B).

17 (3) REGULATIONS.—The Secretary shall pro-
18 mulgate regulations with respect to the establish-
19 ment and management of accounts under this sub-
20 section.

21 **SEC. 7. RESTRICTION ON EMPLOYER TO ENTER INTO CON-**
22 **TRACT WITH THE UNITED STATES FOR FAIL-**
23 **URE TO PROVIDE NOTICE OR BENEFITS.**

24 (a) IN GENERAL.—Except as provided in subsection

25 (b), an employer who implements a plant closing or mass

1 layoff subject to section 4 and does not provide the notice
2 or benefits in accordance with section 5 or 6, respectively,
3 may not enter into a contract with the United States for
4 the provision of products or services that were involved
5 in the work transfer described in section 4 or that are
6 substantially similar to such products or services.

7 (b) NATIONAL SECURITY WAIVER.—The Secretary,
8 in consultation with the head of the appropriate Federal
9 agency to which the proposed contract relates, may waive
10 the restriction described in subsection (a) with respect to
11 an employer if the employer demonstrates that such re-
12 striction would threaten the national security of the
13 United States.

14 **SEC. 8. INVESTIGATIVE AUTHORITY.**

15 (a) IN GENERAL.—To ensure compliance with this
16 Act, or any regulation issued under this Act, the Sec-
17 retary, subject to subsection (c), shall have the investiga-
18 tive authority provided under section 11(a) of the Fair
19 Labor Standards Act of 1938 (29 U.S.C. 211(a)).

20 (b) OBLIGATION TO KEEP AND PRESERVE
21 RECORDS.—An employer shall keep and preserve records
22 in accordance with section 11(c) of the Fair Labor Stand-
23 ards Act of 1938 (29 U.S.C. 211(c)) and in accordance
24 with regulations issued by the Secretary.

1 (c) SUBPOENA POWER.—For the purposes of any in-
2 vestigation provided for in this section, the Secretary shall
3 have the subpoena authority provided for under section
4 9 of the Fair Labor Standards Act of 1938 (29 U.S.C.
5 209).

6 **SEC. 9. ENFORCEMENT.**

7 (a) CIVIL ACTION BY EMPLOYEES.—

8 (1) LIABILITY.—An employer who implements
9 a plant closing or mass layoff in violation of section
10 4 shall be liable to each employee who suffers an
11 employment loss due to such closing or mass lay-
12 off—

13 (A) for damages equal to—

14 (i) the amount of any wages, salary,
15 employment benefits, or other compensa-
16 tion denied or lost to such employee by
17 reason of the violation;

18 (ii) the interest on the amount de-
19 scribed in clause (i) calculated at the pre-
20 vailing rate; and

21 (iii) an additional amount as liq-
22 uidated damages equal to the sum of the
23 amount described in clause (i) and the in-
24 terest described in clause (ii), except that
25 if the employer proves to the satisfaction

1 of the court that the act or omission that
2 violated section 4 was in good faith and
3 that the employer had reasonable grounds
4 for believing that the act or omission was
5 not a violation of such section, such court
6 may, in the discretion of the court, reduce
7 the amount of the liability to the amount
8 and interest determined under clauses (i)
9 and (ii), respectively;

10 (B) for damages equal to any actual mone-
11 tary loss sustained by the employee as a direct
12 result of the violation, such as the cost of pro-
13 viding health care; and

14 (C) for such equitable relief as may be ap-
15 propriate, including employment, reinstatement,
16 and promotion.

17 (2) **STANDING.**—An action to recover the dam-
18 ages or equitable relief described in paragraph (1)
19 may be maintained against an employer in any Fed-
20 eral or State court of competent jurisdiction by any
21 one or more employees who suffer an employment
22 loss due to the closing or mass layoff for and in be-
23 half of—

24 (A) such employees; or

1 (B) such employees and other employees
2 similarly situated under the provisions of rule
3 23 of the Federal Rules of Civil Procedure.

4 (3) FEES AND COSTS.—The court in such an
5 action shall, in addition to any judgment awarded to
6 the plaintiff, allow a reasonable attorney's fee, rea-
7 sonable expert witness fees, and other costs of the
8 action to be paid by the defendant.

9 (b) ACTION BY STATE AND UNIT OF LOCAL GOVERN-
10 MENT.—

11 (1) LIABILITY.—An employer who implements
12 a plant closing or mass layoff in violation of section
13 4 shall be liable to the State or unit of local govern-
14 ment in which the employer is located for damages
15 equal to the difference of—

16 (A) the location assistance provided to the
17 employer by the State or unit of local govern-
18 ment; and

19 (B) the amount of the benefit, if any,
20 which the State or unit of local government will
21 continue to receive as a result of the provision
22 of such assistance to the employer.

23 (2) STANDING.—An action to recover the dam-
24 ages described in paragraph (1) may be maintained
25 against any employer in any Federal or State court

1 of competent jurisdiction by the State or unit of
2 local government described in paragraph (1).

3 (3) FEES AND COSTS.—The court in such an
4 action shall, in addition to any judgment awarded to
5 the plaintiff, allow a reasonable attorney's fee, rea-
6 sonable expert witness fees, and other costs of the
7 action to be paid by the defendant.

8 (c) ACTION BY THE SECRETARY.—

9 (1) ADMINISTRATIVE ACTION.—The Secretary
10 shall receive, investigate, and attempt to resolve
11 complaints of violations of section 4 in the same
12 manner that the Secretary receives, investigates, and
13 attempts to resolve complaints of violations of sec-
14 tions 6 and 7 of the Fair Labor Standards Act of
15 1938 (29 U.S.C. 206 and 207).

16 (2) CIVIL ACTION.—The Secretary may bring
17 an action in any court of competent jurisdiction to
18 recover the damages described in subsection
19 (a)(1)(A) on behalf of each employee who suffers an
20 employment loss due to a plant closing or mass lay-
21 off in violation of section 4.

22 (3) SUMS RECOVERED.—

23 (A) IN GENERAL.—Any sums recovered by
24 the Secretary on behalf of an employee under
25 paragraph (2) shall be held in a special deposit

1 account and shall be paid, on order of the Sec-
2 retary, directly to such employee.

3 (B) UNPAID SUMS.—Any such sums not
4 paid to an employee because of inability to do
5 so within a period of 3 years from the date of
6 recovery by the Secretary shall be credited as
7 an offsetting collection to the appropriations ac-
8 count of the Secretary of Labor for expenses
9 for the administration of this Act and shall re-
10 main available to the Secretary until expended.

11 (d) LIMITATION.—

12 (1) IN GENERAL.—An action may be brought
13 under subsection (a), (b), or (c) not later than 3
14 years after the date of the last event constituting the
15 alleged violation for which the action is brought.

16 (2) COMMENCEMENT WITH RESPECT TO ACTION
17 BY SECRETARY.—In determining when an action is
18 commenced by the Secretary under subsection (c)
19 for purposes of paragraph (1), such action shall be
20 considered to be commenced on the date when the
21 complaint is filed.

22 (e) ACTION FOR INJUNCTION BY SECRETARY.—The
23 district courts of the United States shall have jurisdiction,
24 for cause shown, over an action brought by the Secretary
25 to restrain violations of section 4, including actions to re-

1 strain the withholding of payment of wages, salary, em-
2 ployment benefits, or other compensation, plus interest,
3 found by the court to be due to employees who suffer an
4 employment loss due to a plant closing or mass layoff in
5 violation of such section.

6 **SEC. 10. PROCEDURES IN ADDITION TO OTHER RIGHTS OF**
7 **EMPLOYEES.**

8 The rights and remedies provided to employees under
9 this Act are in addition to, and not in lieu of, any other
10 contractual or statutory rights and remedies of the em-
11 ployees, and are not intended to alter or affect such rights
12 and remedies, except that the period of notification re-
13 quired by section 4(a) shall run concurrently with any pe-
14 riod of notification required by contract or by any other
15 law.

16 **SEC. 11. REQUIREMENT OF POSTING OF NOTICE BY EM-**
17 **PLOYER AT SITE OF EMPLOYMENT.**

18 (a) IN GENERAL.—Each employer shall post and
19 keep posted, in conspicuous places at the site of employ-
20 ment of the employer where notices to employees and ap-
21 plicants for employment are customarily posted, a notice,
22 to be prepared or approved by the Secretary, setting forth
23 excerpts from, or summaries of, the pertinent provisions
24 of this Act and information pertaining to the filing of a
25 charge.

1 (b) PENALTY.—Any employer that willfully violates
2 the requirements described in subsection (a) may be as-
3 sessed a civil money penalty not to exceed \$100 for each
4 separate offense.

5 **SEC. 12. EFFECTIVE DATE.**

6 This Act shall take effect on the date that is 6
7 months after the date of the enactment of this Act.